

AMENDED IN ASSEMBLY APRIL 5, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 276**

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**Introduced by Assembly Member Migden**

February 16, 2001

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An act to amend ~~Section 12965~~ *Sections 12960 and 12965* of the Government Code, relating to employment discrimination.

LEGISLATIVE COUNSEL'S DIGEST

AB 276, as amended, Migden. Discrimination: remedies.

Existing law specifies that all persons have the right to be free of violence or intimidation by threat of violence against their persons or property because of their race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, disability, or position in a labor dispute or because another person perceives them to have one or more of these characteristics. Under existing law, these provisions do not apply to statements concerning positions in a labor dispute that are made during lawful labor picketing.

Existing law makes *any* violation of these provisions *constituting an unlawful practice under the California Fair Employment and Housing Act* subject to an award of damages up to \$150,000 in an administrative proceeding brought under ~~the California Fair Employment and Housing Act~~ *that act*. Existing law specifies that ~~the Director~~, *with certain exceptions, a complaint alleging an unlawful practice subject to the act must be submitted to the Department of Fair Employment and Housing within one year, and that the director of the department must issue an accusation in those administrative proceedings under the act within one year after the complaint is filed with the Department of Fair*

~~Employment and Housing~~ department, except for complaints treated by the director as group or class complaints, with respect to which the accusation must be issued within two years of the filing of the complaint.

This bill would ~~make a two-year limitation applicable to the issuance of all accusations for~~ extend to 2 years the time within which a complaint may be filed for an unlawful practice under the act that is a violation of the above-described right to be free of violence or intimidation or threats of violence. The bill would also extend to 2 years the period within which an accusation may be issued by the director upon a complaint alleging a violation of this type.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 12960 of the Government Code is  
2 amended to read:

3 12960. The provisions of this article govern the procedure for  
4 the prevention and elimination of practices made unlawful  
5 pursuant to Article 1 (commencing with Section 12940) of  
6 Chapter 6.

7 Any person claiming to be aggrieved by an alleged unlawful  
8 practice may file with the department a verified complaint in  
9 writing that shall state the name and address of the person,  
10 employer, labor organization, or employment agency alleged to  
11 have committed the unlawful practice complained of, and that  
12 shall set forth the particulars thereof and contain other information  
13 as may be required by the department. The director or his or her  
14 authorized representative may in like manner, on his or her own  
15 motion, make, sign, and file a complaint. Any employer whose  
16 employees, or some of them, refuse or threaten to refuse to  
17 cooperate with the provisions of this part may file with the  
18 department a verified complaint asking for assistance by  
19 conciliation or other remedial action.

20 No complaint may be filed after the expiration of one year, *or*  
21 *after the expiration of two years in the case of a complaint alleging*  
22 *a violation of Section 51.7 as an unlawful practice under this part,*  
23 from the date upon which the alleged unlawful practice or refusal  
24 to cooperate occurred, except that this period may be extended as



1 follows: (a) for not to exceed 90 days following the expiration of  
2 that year, if a person allegedly aggrieved by an unlawful practice  
3 first obtained knowledge of the facts of the alleged unlawful  
4 practice after the expiration of one year from the date of their  
5 occurrence, or (b) for not to exceed one year following a rebutted  
6 presumption of the identity of the person's employer under Section  
7 12928, in order to allow a person allegedly aggrieved by an  
8 unlawful practice to make a substitute identification of the actual  
9 employer.

10 *SEC. 2.* Section 12965 of the Government Code is amended  
11 to read:

12 12965. (a) In the case of failure to eliminate an unlawful  
13 practice under this part through conference, conciliation, or  
14 persuasion, or in advance thereof if circumstances warrant, the  
15 director in his or her discretion may cause to be issued in the name  
16 of the department a written accusation. The accusation shall  
17 contain the name of the person, employer, labor organization, or  
18 employment agency accused, which shall be known as the  
19 respondent, shall set forth the nature of the charges, shall be served  
20 upon the respondent together with a copy of the verified  
21 complaint, as amended, and shall require the respondent to answer  
22 the charges at a hearing.

23 For any complaint treated by the director as a group or class  
24 complaint for purposes of investigation, conciliation, and  
25 accusation pursuant to Section 12961, an accusation shall be  
26 issued, if at all, within two years after the filing of the complaint.  
27 For any complaint alleging a violation of Section 51.7 of the Civil  
28 Code, an accusation shall be issued, if at all, within two years after  
29 the filing of the complaint. For all other complaints, an accusation  
30 shall be issued, if at all, within one year after the filing of a  
31 complaint. If the director determines, pursuant to Section 12961,  
32 that a complaint investigated as a group or class complaint under  
33 Section 12961 is to be treated as a group or class complaint for  
34 purposes of conciliation and accusation as well, that determination  
35 shall be made and shall be communicated in writing within one  
36 year after the filing of the complaint to each person, employer,  
37 labor organization, employment agency, or public entity alleged in  
38 the complaint to have committed an unlawful practice.

39 (b) If an accusation is not issued within 150 days after the filing  
40 of a complaint, or if the department earlier determines that no



1 accusation will issue, the department shall promptly notify, in  
2 writing, the person claiming to be aggrieved that the department  
3 shall issue, on his or her request, the right-to-sue notice. This  
4 notice shall indicate that the person claiming to be aggrieved may  
5 bring a civil action under this part against the person, employer,  
6 labor organization, or employment agency named in the verified  
7 complaint within one year from the date of that notice. If the  
8 person claiming to be aggrieved does not request a right-to-sue  
9 notice, the department shall issue the notice upon completion of its  
10 investigation, and not later than one year after the filing of the  
11 complaint. A city, county, or district attorney in a location having  
12 an enforcement unit established on or before March 1, 1991,  
13 pursuant to a local ordinance enacted for the purpose of  
14 prosecuting HIV/AIDS discrimination claims, acting on behalf of  
15 any person claiming to be aggrieved due to HIV/AIDS  
16 discrimination, may also bring a civil action under this part against  
17 the person, employer, labor organization, or employment agency  
18 named in the notice. The superior and municipal courts of the State  
19 of California shall have jurisdiction of those actions, and the  
20 aggrieved person may file in any of these courts. Such an action  
21 may be brought in any county in the state in which the unlawful  
22 practice is alleged to have been committed, in the county in which  
23 the records relevant to the practice are maintained and  
24 administered, or in the county in which the aggrieved person  
25 would have worked or would have had access to the public  
26 accommodation but for the alleged unlawful practice, but if the  
27 defendant is not found within any of these counties, an action may  
28 be brought within the county of the defendant's residence or  
29 principal office. A copy of any complaint filed pursuant to this part  
30 shall be served on the principal offices of the department and of the  
31 commission. The remedy for failure to send a copy of a complaint  
32 is an order to do so. Those actions may not be filed as class actions  
33 or may not be maintained as class actions by the person or persons  
34 claiming to be aggrieved where those persons have filed a civil  
35 class action in the federal courts alleging a comparable claim of  
36 employment discrimination against the same defendant or  
37 defendants. In actions brought under this section, the court, in its  
38 discretion, may award to the prevailing party reasonable attorney's  
39 fees and costs, including expert witness fees, except where the



1 action is filed by a public agency or a public official, acting in an  
2 official capacity.

3 (c) (1) If an accusation includes a prayer either for damages for  
4 emotional injuries as a component of actual damages, or for  
5 administrative fines, or for both, or if an accusation is amended for  
6 the purpose of adding a prayer either for damages for emotional  
7 injuries as a component of actual damages, or for administrative  
8 fines, or both, the respondent may within 30 days after service of  
9 the accusation or amended accusation, elect to transfer the  
10 proceedings to a court in lieu of a hearing pursuant to subdivision  
11 (a) by serving a written notice to that effect on the department, the  
12 commission, and the person claiming to be aggrieved. The  
13 commission shall prescribe the form and manner of giving written  
14 notice.

15 (2) No later than 30 days after the completion of service of the  
16 notice of election pursuant to paragraph (1), the department shall  
17 dismiss the accusation and shall, either itself or, at its election,  
18 through the Attorney General, file in the appropriate court an  
19 action in its own name on behalf of the person claiming to be  
20 aggrieved as the real party in interest. In this action, the person  
21 claiming to be aggrieved shall be the real party in interest and shall  
22 have the right to participate as a party and be represented by his or  
23 her own counsel. Complaints filed pursuant to this section shall be  
24 filed in the appropriate superior or municipal court in any county  
25 in which unlawful practices are alleged to have been committed,  
26 in the county in which records relevant to the alleged unlawful  
27 practices are maintained and administered, or in the county in  
28 which the person claiming to be aggrieved would have worked or  
29 would have had access to public accommodation, but for the  
30 alleged unlawful practices. If the defendant is not found in any of  
31 these counties, the action may be brought within the county of the  
32 defendant's residence or principal office. Those actions shall be  
33 assigned to the court's delay reduction program, or otherwise  
34 given priority for disposition by the court in which the action is  
35 filed.

36 (3) A court may grant as relief in any action filed pursuant to  
37 this subdivision any relief a court is empowered to grant in a civil  
38 action brought pursuant to subdivision (b), in addition to any other  
39 relief that, in the judgment of the court, will effectuate the purpose  
40 of this part. This relief may include a requirement that the



1 employer conduct training for all employees, supervisors, and  
2 management on the requirements of this part, the rights and  
3 remedies of those who allege a violation of this part, and the  
4 employer's internal grievance procedures.

5 (4) The department may amend an accusation to pray for either  
6 damages for emotional injury or for administrative fines, or both,  
7 provided that the amendment is made within 30 days of the  
8 issuance of the original accusation.

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